

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 October 2024

DOCKET NUMBER: AR20240002470

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under honorable conditions (General) discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Veterans Affairs (VA) summary of benefits letter

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers:

- AC77-02556 on 25 May 1977
- AR20120016521 on 19 March 2013
- AR20140005244 on 4 December 2014

2. The applicant states he is seeking relief based upon equity and fundamental fairness. While not everyone should be pardoned, forgiven, or upgraded, in some cases, fairness dictates that relief should be granted. He is simply an old, ill, Veteran requesting discharge upgrade. Within the last six years he retired from the U.S. Government. He is 72 years old and undergone surgery for prostate cancer which is in remission. He recently underwent open heart surgery for coronary artery disease and subsequent stent implantation. He has been married to the same woman for over 37 years. He continues to volunteer to serve his fellow Veterans at the VA hospital as his health permits. He continues to be a dedicated husband and father who loves his family, his God, and his country. The last 50 years of his life have been spent in pursuit of those values. He believes that his service-connected disabilities and the passage of time have more than atoned for what should be considered as youthful indiscretion.

3. On 13 January 1971, the applicant enlisted in the Regular Army.

4. On 21 April 1972, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for being disrespectful in language towards his superior noncommissioned officer, on or about 18 April 1972.
5. On 8 May 1973, the applicant accepted NJP under Article 15 of the UCMJ, for disobeying a lawful order from a commissioned officer, on or about 7 May 1973; and disobeying a lawful order from a noncommissioned officer, on or about 4 May 1973. His punishment included forfeiture of \$82.00 per month for one month and reduction to private first class (PFC)/E-3.
6. Court-martial charges were preferred against the applicant on 24 July 1973, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of wrongfully possessing 62.8 grams, more or less, of marijuana.
7. The applicant consulted with legal counsel on 17 August 1973, and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an undesirable discharge; and the procedures and rights that were available to him.
 - a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service in lieu of trial by court-martial. In his request for discharge, he acknowledged he understood that if his request for discharge was accepted, he may be discharged under other than honorable conditions (UOTHC). He understood that, as a result of the issuance of such a discharge, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State law.
 - b. The applicant declined to submit a statement in his own behalf.
8. On 5 September 1973, the applicant's commander recommended approval of the applicant's request for discharge with issuance of an Undesirable Discharge Certificate.
9. Consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge for the good of the service on 10 October 1973, and directed issuance of a DD Form 258A (Undesirable Discharge Certificate).
10. The applicant was discharged on 22 October 1973. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, with Separation Program Number 246 (for the good of the service). He was assigned Reenlistment Code 3. He was discharged in the lowest

enlisted grade and his service characterized as under other than honorable conditions. He completed 2 years, 9 months, and 10 days of active service.

11. The applicant petitioned the Army Discharge Review Board requesting upgrade of his under other than honorable conditions discharge. On 25 June 1974, the Board voted to deny relief and determined he was properly discharged.

12. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 25 May 1977, the Board determined the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommended that all Department of the Army records of the applicant be corrected to show he was separated on a certificate of under honorable conditions (General) from the Army.

13. On or about 6 October 1977, the applicant was issued a new DD Form 214 to show he was discharged under honorable conditions (General).

14. The applicant petitioned the ABCMR multiple times between March 2013 through December 2014, for consideration of his request for upgrade of his under honorable conditions (General) discharge. On 4 December 2014, the Board voted to deny relief and determined that the overall merits of his case were insufficient as a basis to amend the decision of the ABCMR.

15. The applicant provides a VA summary of benefits letter that shows he is receiving service-connected disability compensation for a combined evaluation of 60%. This letter is provided in its entirety for the Board's review within the supporting documents.

16. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

17. In reaching its determination, the Board can consider the applicant's petition, his arguments and assertions, and his service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge

upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with wrongfully having in his possession over 62 grams of marijuana, a controlled substance, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's prior characterization of service upgrade from the Army Board for Correction of Military Records in Docket Number AC-77-02556. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for amendment of the ABCMR decision rendered in Docket Numbers AR20120016521 on 19 March 2013 and AR20140005244 on 4 December 2014.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
2. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.
 - b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.
4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of

Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

//NOTHING FOLLOWS//